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10/642,615	08/19/2003	Ali Afzali-Ardakani	YOR920030023US1	3761
48150 7590 10/21/2008 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER				
GAKH, YELENA G				
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1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/642,615

**Applicant(s)**

AFZALI-ARDAKANI ET AL.

**Examiner**

Yelena G. Gakh, Ph.D.

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,11-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,11-13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Response to the Office action with the request for reconsideration of the application and the Affidavit under 27 C.F.R. 1.132 filed on 08/19/08, are acknowledged. No amendments were made to the claims. Claims 2, 5-10, 14 and 19-30 are cancelled. Claims 1, 3-4, 11-13 and 15-18 are pending in the application.

#### *Response to Amendment*

2. The Affidavit under 37 CFR 1.132 filed 08/19/08 is insufficient to overcome the rejection of claims 1, 3-4, 11-13 and 15-18 based upon rejections under 35 U.S.C. 112, first paragraph, as set forth in the last Office action, because the Affidavit of Dr. VykLicky does not provide any evidence supporting his statements. The mere declaration that "the synthesis of light sensitive compounds including azo double bonds, as recited in the claimed invention and disclosed in, for example, Figures 1A and 1B of the above-identified application, is well-known and within the level of one of ordinary skill in the art" is not supported by the evidence and thus does not bear any weight. The Affidavit should provide such evidence as e.g. a reference, which discloses similar compounds which could exist in the isomeric forms similar to those indicated on Figures 1A, B, or the Applicants' own experiments. Furthermore, the claim does not recite separate aryl-substituted azo compound and sulfur containing compound mentioned in the Affidavit. Rather, the claim recites a light-sensitive compound comprising two arms, each of which comprises an azo-double bond, and a central fragment between said two arms, which comprises a moiety having a functional group selected from a group consisting of a sulfide, a thiol, and an isonitrile, with one of the examples provided on Figure 1A, and which can exist in the forms depicted on Figure 1A. No supporting evidence for enablement of the claimed molecular manipulator is provided in the Affidavit. According to MPEP § 701:

**"Once the examiner has established a prima facie case of lack of enablement, the burden falls on the applicant to present persuasive arguments, supported by suitable proofs where necessary, that one skilled in the art would have been able to make and use the claimed invention using the disclosure as a guide. *In re Brandstadter*, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973). Evidence to supplement a specification which on its face appears deficient under 35 U.S.C. 112 must establish that the information which must be read into the specification to make it complete would have been known to those of ordinary skill in the art. *In re Howarth*, 654 F.2d 103, 210 USPQ 689 (CCPA 1981) (copies of patent specifications which had been opened for inspection in Rhodesia, Panama, and Luxembourg prior to the U.S. filing date of the applicant were not sufficient to overcome a rejection for lack of enablement under 35 U.S.C. 112, first paragraph).**

**Affidavits or declarations presented to show that the disclosure of an application is sufficient to one skilled in the art are not acceptable to establish facts which the specification itself should recite.** *In re Buchner*, 929 F.2d 660, 18 USPQ2d 1331 (Fed. Cir. 1991) (Expert described how he would construct elements necessary to the claimed invention whose construction was not described in the application or the prior art; this was not sufficient to demonstrate that such construction was well-known to those of ordinary skill in the art.); *In re Smyth*, 189 F.2d 982, 90 USPQ 106 (CCPA 1951). Affidavits or declarations purporting to explain the disclosure or to interpret the disclosure of a pending application are usually not considered. *In re Oppenauer*, 143 F.2d 974, 62 USPQ 297 (CCPA 1944). But see *Glaser v. Strickland*, 220 USPQ 446 (Bd. Pat. Int. 1983) which reexamines the rationale on which *In re Oppenauer* was based in light of the Federal Rules of Evidence. The Board stated as a general proposition "Opinion testimony which merely purports to state that a claim or count, is disclosed" in an application involved in an interference . . . should not be given any weight. Opinion testimony which purports to state that a particular feature or limitation of a claim or count is disclosed in an application involved in an interference and which explains the underlying factual basis for the opinion may be helpful and can be admitted. The weight to which the latter testimony may be entitled must be evaluated strictly on a case-by-case bases."

Therefore, objection to the specification and rejection to the claims under 35 U.S.C. 112, first and second paragraphs, are maintained.

### ***Specification***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to as not enabling obtaining and use of the hypothetical molecules disclosed in the specification as the molecular manipulator. The disclosure describes in general terms the Applicants' hypothesis for a possible molecular manipulator, without any evidence for enabling the Applicants' hypothetical molecule. Moreover, the molecules depicted on Figures 1 and 2 are not CA registered (the library search report is attached) and obviously do not exist. The Applicants did not provide any possible synthetic path for obtaining such molecules, not mentioning their testing as molecular manipulators. The hypothesis is not experimentally proven. The structure indicated as an example cannot be used as a manipulator as disclosed in the specification, since it would have a highly non-planar structure, contrary to what is depicted in the drawings. Moreover, its steric configuration and energetic state would not provide conditions favorable for using such molecules as manipulators as can be clearly seen

from the prior art described below, which is especially true for the prophetic example depicted on Figure 2.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3-4, 11-13 and 15-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

***The Breath of the Claims***

The claims recite in the most general terms "a molecule manipulator" comprising a light-sensitive molecule with two azo double bonds which change their configuration upon light irradiation, with the molecule attached to the probe of a scanned-proximity probe microscope. No specifically synthesized molecules, which can act as molecular manipulators as recited in the claims, are disclosed in the specification. The example depicted on Figure 2 is not a real molecule and is not enabled as the molecular manipulator. The specification does not provide any guidance for synthesis of such molecule or any evidence of its ability to act as a molecular manipulator. The structure provided as an example is highly speculative. No other examples besides the fictitious structure are provided in the specification. No guidance for the synthesis of the molecule recited in the claims is provided in the specification. Thus, the claims recite, first, the molecule, which does not exist and the synthesis of which is not disclosed in the specification, and, second, its functional utility as a "molecular manipulator", with no evidence whatsoever that it in fact can be used as the molecular manipulator. The forms depicted in the drawings, which should demonstrate its use as the molecular manipulator, are highly improbable and no evidence exists that they can anyhow be obtained.

### ***The Nature of the Invention***

The invention recited in the claims is directed toward a hypothetical molecular manipulator based on a known fact of *cis-trans* light-induced transformation of azo-bond. The only prophetic example for the claimed "manipulator" is depicted as structures on Figures 1A and 2. The *cis*-form drawn on Figure 1A is totally unrealistic because of the severe steric hindrance, which would be created between two proximate arms. Since the arms can relatively freely rotate about Ph-Ph bonds, the configuration with the two arms turned to each other would be avoided, even if such molecule could be synthesized. Therefore, the specification discloses unenabled utility of the fictitious molecules, with no guidance for the synthesis of this molecule.

### ***The State of the Prior Art***

The prior art is in the field of nanotechnology related to "molecular machines" or "molecular tools". The examiner searched patent and non-patent literature pertinent to molecular tweezers, clips, manipulators, motors, etc. One of the most recent papers on molecular motors, "*Molecular Motor Spins On Surface*" by Netherlands chemists was proclaimed as the "first light-driven molecular rotary motor attached to a solid surface" (*Chemical & Engineering News*, 2005): "by anchoring a chiral helical alkene onto a gold nanoparticle, chemists in the Netherlands have created the first light-driven molecular rotary motor attached to a solid surface (*Nature* 2005, 437, 1337). This mounted molecule, the researchers say, "might be a first step toward the construction of more elaborate and functional nanosized mechanical devices" and perhaps systems to exploit solar energy. Fastening a rotary molecule to something solid, as Ben L. Feringa and colleagues at the University of Groningen have done, brings these spinning systems closer to becoming useful nanomachines. Putting motors on a surface is important because it should make it easier for them to do useful things, like move themselves or cargo, or change the nature of the surface in response to a stimulus," says T. Ross Kelly, a Boston College chemistry professor who made a molecular motor that runs on chemical fuel. Feringa's team uses two thiol groups to affix their molecular motor to a gold nanoparticle. Two eight-carbon legs link these thiols to the alkene motor. The researchers note that they chose this lengthy anchor to minimize any direct electronic interaction between the alkene and the gold particle. The researchers start the motor's rotation by photoisomerizing the double bond. This forces the

methyl group on the molecule's lone stereocenter into an energetically disfavored orientation. When heated, this unstable isomer undergoes a helical inversion, resulting in a net 180° rotation. This step also ensures unidirectional movement. Repeating the two isomerizations completes the 360° revolution". The molecules have extremely well defined steric structure with experimentally proven behavior as molecular manipulators.

*Klärner et al. (Acc. Chem. Res., 2003)* provide a detailed review of "Molecular Tweezers and Clips as Synthetic Receptors" with tweezers and clips containing naphthalene and benzene spacer units, which are synthesized by repetitive Diels-Alder reactions. The tweezers and clips should possess specific structural, thermodynamics and other physical-chemical requirements in order for such host-guest interaction to take place: "these molecules are well pre-organized because of their belt-type structures. But bond angle distortions require little energy and, therefore, should induce certain flexibility in these systems, allowing the receptor "arms" to be expanded and compressed during the substrate complexation in a way comparable to the working principle of mechanical tweezers. Thus, a fit of the receptor geometry to the substrate topography to a certain extent, induced by the complex formation, can be expected. The size and shape of the receptor cavities can be systematically varied by varying the number and size of the spacer units. Finally, the parent compounds 1a-Ta are simple hydrocarbons containing only nonconjugated benzene and/or naphthalene rings arranged in a belt-like concave-convex topography, so that an aromatic substrate can be bound via multiple  $\pi$ - $\pi$  and CH- $\pi$  interactions" (page 920).

*Feringa et al. (Appl. Phys., 2002)* describe "Light-driven molecular switches and motors" with detailed disclosing of physical-chemical properties of molecular motors comprising double bond, which undergoes light-induced cis-trans transformation. Specific requirements should be fulfilled for the switches and motors to perform their functions. *Jones et al. and Pearson et al. (J. Org. Chem., 1997)* described in detail "Molecular scale wires with alligator clips" providing their full synthesis and physical-chemical characteristics. A series of papers is devoted to molecular devices based on light-induced cis-trans transformation of azo-bond in azobenzene moieties. *Stiller et al. (Surface and Interface Analysis, 2000)* teach "scanning Kelvin microscopy as a tool for visualization of optically induced molecular switching in azobenzene self assembling films"; *Hugel et al. (Science, 2002)* disclose "single-molecule optomechanical cycle" with a detailed study of molecular devices based on photosensitive azobenzene polymers.

*Muraoka et al. (J. Am. Chem. Soc., 2003)* describe “light-driven open-close motion of chiral molecular scissors” based on azobenzene expansion and contraction (cis-trans transformation) of N=N bond. *Jousseime et al. (J. Am. Chem. Soc., 2003)* teach “photomechanical actuation and manipulation of the electronic properties of linear  $\pi$ -conjugated systems” using azobenzene chromophore. *Wen et al. (J. Phys. Chem. B, 2005)* teach “photochemical-controlled switching based on azobenzene monolayer modified silicon (III) surface”. *Bellini et al. (J. Phys.:Condens. Matter, 2006)* disclose “light-induced molecular motion of azobenzene-containing molecules: a random-walk model”. None of the recited papers indicate the possibility of using molecules recited in the claims and those depicted on Figures 1 and 2 as molecular manipulators; the examiner did not find any reference, which would disclose a synthesis of similar compounds. The bulkiness of the cis-conformer of a hypothetical structure 1A would assume its high non-planarity, which would totally prevent its ability to grab molecules and be used as a molecular manipulator.

#### ***The Level of One of Ordinary Skill***

The examiner considers synthesis of any of the hypothetic structures disclosed in the specification, including the one depicted on Figure 1A and recited in the claims beyond the skill of a routineer in the art until the Applicants prove otherwise. Obtaining molecules recited in the claims would have been undue experimentation for any routineer in the art. Moreover, even if the synthesis of such structures were possible, it would have been an undue experimentation for a routineer in the art to study these molecules in relation to their ability to be molecular manipulators, especially in light of high improbability of existing structures depicted in Figures 1A, B.

#### ***The Level of Predictability in the Art***

The prior art does not provide a ground for any expectation of success for using molecules such as depicted on Figure 2, as molecular manipulators. Extensive prior art on molecular manipulators, such as tweezers, scissors, motors, etc., are rigid molecules with well defined stereometry and thermodynamic parameters. All molecule manipulators have to possess certain characteristics, such as geometrical parameters that fir the molecules do be manipulated. None of the literature references found by the examiner discloses a molecular manipulator with undefined geometry and thermodynamic characteristics. Furthermore, existence of *cis*-



configuration depicted on Figure 2, which is a required condition for using the molecule as the molecules manipulator, is highly improbable. The prior art does not predict any utility for the fictitious compounds recited in the claims, not mentioning them being molecular manipulators.

#### ***The Amount of Direction Provided by the Inventor***

The instant disclosure does not provide any direction for synthesis of the hypothetical structures disclosed in the specification. The instant disclosure does not provide any direction for application of these fictitious structures as molecular manipulators. The specification does not provide any guidance for transferring *trans*-form into *cis*-form as shown in Figure 2, since *cis*-form that is drawn on the Figure is highly improbable because of the steric hindrance and energy requirements; since such structure cannot exist, its application as the molecular manipulator is highly improbable. Thus, the inventors did not provide any guidance for obtaining and utilizing the structure depicted in drawings and recited in the claims.

#### ***The Existence of Working Examples***

No working examples are provided in the specification for either the synthesis of the compounds disclosed in the specification and their attachment to the microscope probe, or for their application as molecular manipulators. The Applicants did not provide any evidence for the possibility of the structure depicted on Figure 2 to exist in *cis*-form.

#### ***The Quantity of Experimentation Needed to Make or Use the Invention Based on the Content of the Disclosure***

It would require an undue experimentation for a routineer in the art to synthesize hypothetical compounds disclosed in the specification; it would require even more of undue experimentation to study them as potential molecular manipulators with practically no expectation for success, since the structures do not meet any requirements established by the prior art for the molecular manipulators. Moreover, it seems to be quite improbable for a routineer in the art to obtain any structure similar to the one depicted on Figure 2 as a prophetic example of the claimed molecular manipulators, because the structure can hardly exist in *cis*-form.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 3-4, 11-13 and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a molecular manipulator". It is not clear, what is meant by the term "molecular manipulator" in relation to the compound recited in the body of the claim. It is not clear, how such molecule can be "a molecular manipulator". It is also not clear, how the molecule is attached to the probe.

#### ***Response to Arguments***

8. Applicant's arguments filed 08/19/08 have been fully considered but they are not persuasive.

The examiner believes that she has established rejection of the pending claims under 35 U.S.C. 112, first paragraph, in a full accordance with the enablement requirements provided by MPEP §2164.01. The examiner provided all eight criteria establishing the basis for undue experimentation by a practitioner in the art to make and use the invention. Furthermore, the examiner failed to find "at least one method for making and using the claimed invention that bears a reasonable correlation to the entire scope of the claim", to which the Applicants refer.

The Applicants argue that the claimed invention is directed toward the molecular manipulator, rather than the synthesis of the compound, and thus the enablement rejections related to the disclosure of the synthesis of the compound are not relevant to the subject matter of the claimed invention. Examiner respectfully disagrees. The claimed molecular manipulator is based on the chemical compound, or a group of chemical compounds, which are not registered and therefore are new chemical compounds. Therefore, either their synthesis or at least synthetic path had to be provided in the specification. The specification does not provide any guidance for a routinier in the art to synthesize a light-sensitive compound comprising two arms, each of which comprises an azo-double bond, and a central fragment, comprising a functional group selected from a group consisting of a sulfide, a thiol, and an isonitrile, in particular compounds depicted on Figures 1A and 1B. Furthermore, the enablement requirements are based only partly on the synthesis of the new compounds recited in the claims.

The claims recite "molecular manipulator" based on the new compounds, the main feature of which should be their ability to simultaneously undergo *cis-trans* transformation of the azo bonds in their side chains ("arms") in order to act as "molecular manipulator". The only examples for such structures are prophetic structures provided on Figures 1A-1B and 2. The examiner has explicitly indicated, as to why *cis*-configuration of both side chains depicted on Figure 1A is highly improbable. The steric hindrance of such configuration is very high, and with Ph-Ph groups capable of almost free rotation there would not be any thermodynamic basis for such conformation to exist.

Regarding the Applicants' recitation of MPEP §2164.02 regarding working examples, the examiner respectfully draws the Applicants' attention to the following continuation of the recitation:

**"The specification need not contain an example if the invention is otherwise disclosed in such manner that one skilled in the art will be able to practice it without an undue amount of experimentation. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642, 645 (CCPA 1970). Lack of a working example, however, is a factor to be considered, especially in a case involving an unpredictable and undeveloped art."**

The examiner has demonstrated that the claimed subject matter of the instant application involves an unpredictable art, which requires a disclosure of at least one working example.

Regarding the Applicants' remarks regarding each of the criteria for the enablement requirements, it appears that the Applicants concentrated their attention exclusively to the rejection related to a lack of the disclosure of the synthesis of new compounds recited in the claims. The examiner would like to indicate, that this requirement is only a part of the grounds for rejections established by the examiner.

In response to their argument that the synthesis of the compounds is not the subject matter of the pending claims, the examiner would like to express once more, that the "molecular manipulator" recited in the claims is based on new compounds, and therefore either their synthesis should be disclosed in the specification, or the Applicants should provide a reference which discloses the synthesis of the similar compounds. The examiner does not believe that Figures 1A and 1B "disclose in detail, how the light sensitive molecule[s] are formed in a molecular manipulator", and how the molecular manipulator is used for moving a nanostructure.

In fact, the specification does not disclose how the *cis*-conformation for both arms for the structure 1A can be formed, and why it should act as molecular tweezers.

Regarding discussion of the prior art the Applicants provide the following statement:

"First, Applicants submit that, as described in the Background of the Invention and Summary of the Invention sections of the Application, the light sensitive molecules discussed in the Application have not been used conventionally in molecular manipulators. That is one of the novel features of the claimed invention."

The examiner agrees that the light sensitive molecules discussed in the application have not been used conventionally in molecular manipulators, because, first, they have never been obtained by either the research groups studying molecular manipulators, or by the present Applicants. Second, nothing in the prior art indicates that such molecules, even if they could be in principle synthesized, can exist in the forms depicted on Figures 1A-1B and 2 and thus are capable of being used as molecular manipulators.

Next, the Applicants indicate that "the documents in IDS filed on 08/19/03 illustrate the synthesis of similar light sensitive molecules." The examiner respectfully requests the Applicants to indicate specific references, which disclose the structures closest to those depicted on Figure 1A, which is the example of the molecule recited in the pending claims.

It does not appear that the Applicants addressed any issues related to the references provided by the examiner. The references illustrate various molecular manipulators studied by a number of research groups and based on rigorous experimental and theoretical considerations of structural and thermodynamic properties of the molecular manipulators and the nanostructures they are manipulated on. None of these references were mentioned by the Applicants, and no arguments were provided regarding the state of the prior art.

Regarding the statement of the Applicants that the time and experimentation for obtaining and using the recited molecular manipulators is "routine", the examiner respectfully disagrees. As it has been demonstrated in the present and previous Office actions, the molecular manipulators of the instant application are highly improbable, and therefore their obtaining and using cannot be called "routine".

Therefore, the examiner finds the Applicants' arguments non-persuasive and the present invention un-enabled.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yelena G. Gakh, Ph.D. whose telephone number is (571) 272-1257. The examiner can normally be reached on 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/19/2008

/Yelena G. Gakh/  
Primary Examiner, Art Unit 1797

